



26 October 2010

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email to: legcon.sen@aph.gov.au

Dear Committee Secretary

Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010 (Human Rights Scrutiny Bills)

The Law Institute of Victoria (LIV) is pleased to make this submission to the Senate Legal and Constitutional Committee's Inquiry on the Human Rights Scrutiny Bills. The LIV is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 15,000 members.

The LIV is a constituent body of the Law Council of Australia (LCA). We support the LCA's submission to this Inquiryⁱ and recommend that the Human Rights Scrutiny Bills be enacted into law. As explained below, we nevertheless consider that some amendments should be made to ensure that the scrutiny of human rights compliance under the Human Rights Scrutiny Bills is comprehensive, meaningful and effective. The LIV's views on the Human Rights Scrutiny Bills are informed by the perspectives and experience of our members in implementing the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

A National Human Rights Act

As stated in our submission to the National Human Rights Consultation,ⁱⁱ the LIV maintains that Australia should protect and promote human rights with a National Human Rights Charter that provides for the protection of all human rights binding on or recognised by Australia.

The LIV considers that any federal human rights policy initiatives and law reforms must be preceded by a National Human Rights Charter. We recognise, however, that properly structured parliamentary scrutiny of human rights compliance would be an important vehicle for promoting human rights in the absence of a National Human Rights Charter.

With the amendments proposed by the LCA and emphasised below, the mechanisms described in the Human Rights Scrutiny Bills could lead to much needed systemic change, deepening parliamentary and public understanding of the protection and promotion of human rights in Australia.

Comprehensive scrutiny: definition of human rights

The definition of 'human rights' in the *Human Rights (Parliamentary Scrutiny) Bill 2010* (the Human Rights Scrutiny Bill) is limited to seven agreements.ⁱⁱⁱ In our view, all human rights binding on or recognised by Australia should be included in the definition of 'human rights'.



We consider that clause 3(1) of the Human Rights Scrutiny Bill should be framed as an inclusive – as opposed to exclusive – list of human rights instruments to ensure that it captures all human rights instruments binding on or recognised by Australia now and in the future.

Meaningful scrutiny: detailed reasons in statements of compatibility

The Human Rights Scrutiny Bill provides for statements of compatibility to accompany Bills and legislative instruments. As is the case under the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Victorian Charter s.28(3)),^{iv} statements of compatibility accompanying new legislation should explain in detail whether or not, and if so how, the legislation is compatible with human rights. Assessments of compliance with human rights must be genuine, comprehensive and properly described.

The LIV believes that a clause based on s.28(3) of the Victorian Charter should be included in Part 3 of the Human Rights Scrutiny Bill. We would also recommend providing for a reasoned explanation of any request of parliament to enact any provision deemed inconsistent with human rights.

Effective scrutiny: appropriate human and financial resources

As noted in the LCA's submission,^v the Parliamentary Joint Committee on Human Rights (Human Rights Committee) charged with reporting on human rights compliance under the Human Rights Scrutiny Bill must be provided with appropriate time to consider bills. It is also vital that the Human Rights Committee receive the necessary human resources – particularly independent expert advisers – and financial resources to carry out its functions effectively.

A benefit of scrutiny by the Human Rights Committee is that Members of Parliament, from all sides of politics, will become intimately involved in the scrutiny process. It is an important political mechanism to ensure laws and policies debated by Parliament meet human rights standards, informed by detailed reasons provided in statements of compatibility.

Please contact Alice Palmer on _____ or _____ in relation to this submission.

Yours faithfully

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Law Institute of Victoria

ⁱLCA Submission, http://www.aph.gov.au/Senate/committee/legcon_ctte/human_rights_bills_43/submissions.htm

ⁱⁱ See LIV Submission to the National Human Rights Consultation, 15 June 2009

[http://www.humanrightsconsultation.gov.au/www/nhrcc/submissions.nsf/list/AF8349A80DB77513CA25760700160A2E/\\$file/law_institute_of_victoria_AGWW-7T27WJ.pdf](http://www.humanrightsconsultation.gov.au/www/nhrcc/submissions.nsf/list/AF8349A80DB77513CA25760700160A2E/$file/law_institute_of_victoria_AGWW-7T27WJ.pdf).

ⁱⁱⁱ Namely, (a) the International Convention on the Elimination of all Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40);(b) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);(c) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);(d) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9);(e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984 ([1989] ATS 21);(f) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);(g) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12).

^{iv} Section 28(3) of the Victorian Charter states: 'A statement of compatibility must state (a) whether, in the member's opinion, the Bill is compatible with human rights and, if so, how it is compatible; and (b) if, in the member's opinion, any part of the Bill is incompatible with human rights, the nature and extent of the incompatibility.'

^v LCA Submission, para 99.